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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,923	07/11/2003	Roy Phillip Demott	5530	4231

7590

10/06/2005

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/617,923

Applicant(s)

DEMOTT ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 and 26-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 26-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed July 14, 2005, has been entered. Claims 1, 16, 19, 23, 26, 27, 32, 35, 49, and 50 are amended as requested. Claims 24 and 25 are cancelled. Thus, the pending claims are 1-23 and 26-51.
2. Said amendment renders moot the duplicate claim objection set forth in section 1 of the last Office Action. Additionally, said amendment is sufficient to overcome the 112, 2<sup>nd</sup> rejections set forth in sections 2-5 of the last Office Action.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-16, 18-22, 26, and 35-50 stand rejected under 35 USC 103(a) as being unpatentable over US 6,492,001 issued to Rubin et al. in view of US 5,672,222 issued to Eschenbach as set forth in section 7 of the last Office Action.

Applicant has amended independent claims 1 and 35 to change the "adhesive layer" to an "adhesive web." However, said amendment is insufficient to overcome the above rejection. Specifically, since applicant has not set forth an explicit definition of "web," the term is employed in its broadest reasonable sense, which can be synonymous with "layer." Note

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applicant also uses the terms “layer” and “web” interchangeably in the specification (e.g., page 7, section [0021]). Furthermore, since applicant teaches said adhesive web is a solid web which is heated to dissolve and bond the nonwoven and film layers (page 11, section [0030]), it is argued that in the final product the adhesive loses its “web” form. Thus, said amendment is insufficient to overcome the rejection.

5. Claims 17, 23, 27-34, and 51 are rejected under 35 USC 103(a) as being unpatentable over US 6,492,001 issued to Rubin et al. in view of US 5,672,222 issued to Eschenbach and in further view of US 2004/0058603 issued to Hayes.

Applicant has amended independent claims 27 and 32 to limit the film to a polyurethane polymer comprising an aromatic polyether. Additionally, claims 17, 23, and 51 are limited to aromatic polyether polyurethanes. While Rubin teaches polyurethanes include aliphatic and aromatic urethanes, the reference does not explicit teach a polyurethane comprising an aromatic polyether. However, said aromatic polyether polyurethanes are well known in the art. For example, Hayes teaches a aromatic poly(ether-urethane) copolymer for use in making a laminated tarp (section [0154]). Hence, it would have been obvious to one of ordinary skill in the art to select a known specific polyurethane, such as that by Hayes, for the generic polyurethane teaching of Rubin. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 17, 23, 27-34, and 51 are rejected.

***Response to Arguments***

6. Applicant traverses the examiner's use of Official Notice with respect to polypropylene fibers, polyester fibers, acrylic latexes, and flame retardants. However, to adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). It is asserted that applicant has not met this burden. For example, applicant has not shown why the fact that "polypropylene fibers are common synthetic textile fibers" is not common knowledge or well-known in the art. Applicant has also fails to show that textiles commonly employed for garments and upholstery do not require flame retardant materials due to federal governments standards. Therefore, applicant's arguments are found unpersuasive.

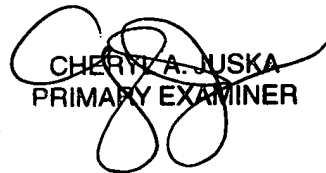
***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj

October 3, 2005